

5123-3-04**Licensed residential facilities - admission of residents, provision of services, and maintenance of service records.****(A) Purpose**

This rule establishes standards to ensure that services provided in residential facilities licensed in accordance with section 5123.19 of the Revised Code focus on achievement of outcomes that are important to and important for individuals served, individuals are involved in development and delivery of their services, the confidentiality of individuals' records is maintained, and individuals' records are readily accessible for service delivery and for review by the department.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Administrator" means the person responsible for administration of the residential facility who shall be directly and actively involved in the day-to-day operation of the residential facility and oversee provision of services by the residential facility.
- (2) "Community participation" means engagement of an individual in daytime and evening activities that:
 - (a) Are available to the general public (such as employment, clubs, meetings, and advocacy groups);
 - (b) Are important to the individual;
 - (c) Involve others with and without disabilities who are not paid to provide care to the individual; and
 - (d) Create opportunities for the individual to develop meaningful relationships in the local community as is typical of other citizens of that community.
- (3) "Direct support professional" means a person who is employed in a "direct services position" as that term is defined in section 5123.081 of the Revised Code.
- (4) "Individual" means a person with a developmental disability.
- (5) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

- (6) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or the individual's guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or the individual's guardian, as applicable, may withdraw informed consent at any time.
- (7) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (8) "Licensee" has the same meaning as in section 5123.19 of the Revised Code.
- (9) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
- (10) "Modified texture or therapeutic diets" means diets that are altered in any way to enable the individual to eat (e.g., food is chopped or pureed) or diets that are intended to correct or prevent a nutritional deficiency or health problem.
- (11) "Operator" means the entity responsible for management of and provision of services at the residential facility.
- (12) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (13) "Team," as applicable, has the same meaning as in rule 5123-4-02 of the Administrative Code or means an "interdisciplinary team" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (14) "Unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.

(C) Admission of residents

- (1) Admission to a residential facility is voluntary, requiring informed consent.
- (2) An operator shall:
- (a) Admit as residents only individuals whose service needs can be met by the residential facility.

- (b) When reviewing an application for admission, consider its ability to maintain adequate services to all residents of the residential facility.
- (c) Notify the individual and referring party in writing of the outcome of the admission decision within thirty calendar days of receiving an application for services and referral information.
- (d) Notify the county board of developmental disabilities in writing within fourteen calendar days of admitting a new resident, after securing informed consent to provide the notification.

(D) Standards of service provision

(1) The operator, administrator, and staff of a residential facility shall:

- (a) Provide services in a person-centered manner.
- (b) Be able to effectively communicate with each individual receiving services.
- (c) Be knowledgeable in the individual service plan for each individual prior to providing services to the individual.
- (d) Implement services in accordance with the individual service plan.
- (e) Take all reasonable steps necessary to prevent the occurrence or recurrence of major unusual incidents and unusual incidents.
- (f) Comply with the requirements of rule 5123-2-06 of the Administrative Code regarding development and implementation of behavioral support strategies.

(2) An operator shall ensure that a direct support professional does not:

- (a) Provide services to the direct support professional's minor child.
- (b) Provide services to the direct support professional's spouse.
- (c) Provide services to the minor child of the administrator.
- (d) Provide services to the spouse of the administrator.
- (e) Administer medication to or perform health-related activities for individuals who receive services unless the direct support professional meets the applicable requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.

(f) Use or be under the influence of the following while providing services:

(i) Alcohol;

(ii) Illegal drugs;

(iii) Illegal chemical substances; or

(iv) Controlled substances that may adversely affect the direct support professional's ability to furnish services.

(E) Health care

(1) Self-administration or assistance with self-administration of prescribed medication shall be conducted in accordance with rule 5123:2-6-02 of the Administrative Code.

(2) Delegation of nursing tasks, excluding the provision of health-related activities, shall be conducted in accordance with rule 5123-6-06 of the Administrative Code and Chapter 4723-13 of the Administrative Code.

(3) Administration of prescribed medication pursuant to sections 5123.42 to 5123.46 of the Revised Code shall be conducted in accordance with Chapters 5123-6 and 5123:2-6 of the Administrative Code.

(4) An operator shall comply with the requirements for reporting medication/treatment errors in accordance with rules 5123-6-07 and 5123-17-02 of the Administrative Code.

(5) An operator shall develop and implement written procedures for the disposal of prescribed medication which require that disposal of prescribed medication is verified and recorded by two staff members or by an independent external entity. Dangerous drugs shall be disposed in accordance with rule 4729-9-06 of the Administrative Code.

(6) In the event of termination of services pursuant to rule 5123-3-05 of the Administrative Code, an operator shall ensure:

(a) A written accounting of prescribed medication is completed no later than the last day of the individual's residency and verified by two staff members.

(b) A plan is developed for transfer of prescribed medication to the individual or the individual's guardian, as applicable.

(7) In the event of the death of an individual, an operator shall ensure:

- (a) A written accounting of prescribed medication is completed immediately and no later than twenty-four hours following the death and verified by two staff members.
- (b) The operator and staff of the residential facility cooperate with any investigation conducted by a legally authorized entity.
- (c) Disposal of prescribed medication occurs in a manner set forth in paragraph (E)(5) of this rule, unless an investigation calls for the disposal to be delayed.

(F) Transportation

An operator shall:

- (1) Provide or arrange for transportation of individuals residing in the residential facility in accordance with each resident's individual service plan.
- (2) Ensure that each employee providing transportation holds a valid driver's license as specified in Ohio law.
- (3) Ensure that each employee providing transportation is covered by valid personal or corporate liability insurance as specified in Ohio law.
- (4) Obtain, for each employee providing transportation, a driving record prepared by the bureau of motor vehicles no earlier than fourteen calendar days prior to the date of initial employment as a driver and at least once every three years thereafter. A person having six or more points on the person's driving record is prohibited from providing transportation.
- (5) Require each employee providing transportation to immediately notify the operator in writing if the employee accumulates six or more points on the employee's driving record or if the employee's driver's license is suspended or revoked.
- (6) Develop and implement written policies and procedures regarding vehicle accessibility, vehicle maintenance, and requirements for vehicle drivers.

(G) Food

- (1) An operator shall offer daily meals and snacks that meet an individual's nutritional needs and preferences as identified by the individual.

- (2) Modified texture or therapeutic diets shall be prepared and served in accordance with the instructions of a physician or licensed dietitian. An operator shall maintain instructions regarding modified texture or therapeutic diets in accordance with paragraph (J) of this rule.
- (3) Meals shall provide for variety, substitutions, and accommodation of individuals' personal preferences and religious beliefs. Individuals shall participate in meal planning and preparation to the extent of their interest and ability to do so.
- (4) Fresh food supplies sufficient for three days and staple food supplies sufficient for at least five days shall be available in the residential facility at all times.
- (5) Food shall be prepared and stored properly and in accordance with health codes to protect it against contamination and spoilage. Food products shall be stored separately from potentially harmful non-food items, particularly cleaning and laundry compounds.

(H) Clothing and personal belongings

- (1) An operator shall ensure that each individual has an adequate amount of personal clothing in good repair, well-fitting, and comparable in style to that worn by age peers in the community. The team shall ensure the clothing needs of an individual who does not have personal funds available to cover needed items are met. All clothing shall be clean and appropriate for the season and the activities in which the individual is engaged.
- (2) An operator shall encourage each individual to select, purchase, and maintain the individual's own clothing and to dress as independently as possible.
- (3) When an individual has been assessed to need assistance with management of personal possessions, the operator shall record the individual's clothing and personal belongings within fourteen calendar days of admission and update the record at least annually thereafter. Any single item with a purchase price of fifty dollars or more purchased by or on behalf of an individual who has been assessed to need assistance with management of personal possessions, shall be added to the record when acquired and deleted from the record when discarded or lost.
- (4) An operator shall not discard an individual's clothing or personal belongings without the consent of the individual or the individual's guardian, as applicable.
- (5) If operation of a residential facility is transferred from one operator to another, the outgoing operator shall convey individuals' clothing and personal belongings to the incoming operator.

(I) Community participation for individuals who reside in an intermediate care facility for individuals with intellectual disabilities

(1) The operator of an intermediate care facility for individuals with intellectual disabilities shall ensure that each individual:

(a) Has opportunities to access age-appropriate activities, engage in meaningful employment and non-work activities, and pursue activities with persons of the individual's choosing.

(b) Routinely has information in formats the individual understands about activities and programs related to community employment in accordance with rule 5123:2-2-05 of the Administrative Code offered by other providers as well as opportunities to explore and experience community participation in accordance with the individual service plan and the individual's desired outcomes.

(c) Participates in activities that foster community participation unless the individual service plan indicates why, based on evaluations and assessments, such participation is medically contraindicated.

(d) Has access to a variety of activities that reflect what is important to the individual and what is important for the individual.

(2) The activities and programs described in paragraph (I)(1) of this rule shall not be provided in an intermediate care facility for individuals with intellectual disabilities or within two hundred feet of the intermediate care facility for individuals with intellectual disabilities except that:

(a) An intermediate care facility for individuals with intellectual disabilities that was providing day activities in or on the grounds of the intermediate care facility for individuals with intellectual disabilities prior to July 1, 2005 in accordance with paragraph (H)(4) of rule 5123:2-3-04 of the Administrative Code in effect on the day immediately prior to the effective date of this rule, may continue to provide day activities at that same location.

(b) An individual may choose to participate in activities and programs through virtual support under the following conditions:

(i) Virtual support does not have the effect of isolating the individual from the community or preventing the individual from interacting with people with or without disabilities;

- (ii) The use of virtual support has been agreed to by the individual and the individual's team and is specified in the individual service plan; and
- (iii) The use of virtual support complies with applicable laws governing the individual's right to privacy and the individual's protected health information.

(J) Individuals' service records

(1) An operator shall ensure:

- (a) The following current records for each individual are maintained at the residential facility:
 - (i) A photograph of the individual.
 - (ii) Legal status of the individual.
 - (iii) Individual service plan, including documentation of informed consent for services, supports, and activities provided.
 - (iv) A signed authorization to seek medical treatment or documentation to demonstrate that attempts to secure such authorization were unsuccessful.
 - (v) Medication and/or treatment records which indicate the person who prescribed the medication and/or treatment and the date, time, and person who administered the medication and/or treatment.
- (b) The following records for each individual are maintained by the operator in an accessible location and provided upon request to the department for review at the residential facility or at another location mutually agreed upon by the operator and the department:
 - (i) Former versions of records specified in paragraph (J)(1)(a) of this rule.
 - (ii) Admission and referral records.
 - (iii) All service documentation including notations of progress.
 - (iv) Records of all medical and dental examinations and immunization records as appropriate based upon the individual's age.
 - (v) Records of major unusual incidents and unusual incidents.

- (vi) Major unusual incident investigation files.
 - (vii) Reconciliations of the individual's account transaction record as described in rule 5123-2-07 of the Administrative Code.
 - (viii) Records of negotiable items owned by the individual which can be transferred or converted to cash (such as bonds or promissory notes).
 - (ix) Records of clothing and personal belongings for individuals who have been assessed to need assistance with management of personal possessions.
 - (x) A written accounting prepared within thirty calendar days following termination of an individual's residency at the residential facility that documents:
 - (a) Circumstances of termination of residency (e.g., the individual moved to another residential setting, the individual died, or the operator terminated services in accordance with rule 5123-3-05 of the Administrative Code);
 - (b) The individual's new address;
 - (c) Conveyance of the individual's records, identification documents, prescriptions, and prescribed medications;
 - (d) Disposition of the individual's clothing and personal belongings; and
 - (e) Release or disposition of the individual's personal funds in accordance with rule 5123-2-07 of the Administrative Code.
- (2) If operation of a residential facility is transferred from one operator to another, the outgoing operator shall convey the records specified in paragraph (J)(1) of this rule to the incoming operator.
- (3) All information contained in an individual's records shall be considered confidential. Records shall be maintained in accordance with state and federal regulations in such a manner to ensure their confidentiality and protect them from unauthorized disclosure.
- (4) An operator shall develop a records retention schedule for all records in accordance with applicable state and federal requirements.

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